



**Opening Statement of Rep. Kevin Kiley (R-CA), Chairman
Subcommittee on Workforce Protections**

**Hearing: “Examining the Policies and Priorities of the Occupational Safety and
Health Administration”**

September 27, 2023

(As prepared for delivery)

The Department of Labor’s Occupational Safety and Health Administration has a vital mission. The agency is charged with protecting the rights of American workers and supporting employers in meeting health and safety standards.

Unfortunately, OSHA, has veered from this mission. It has taken its eye off the ball when it comes to protecting worker safety, focusing instead on political goals that could not win support through the democratic channels of our government. The result has been harmful and ill-considered policies that have compromised our system of checks and balances and weakened our economic competitiveness while at the same time depriving workers of important protections.

It bears emphasizing that both our witness today, Mr. Parker, along with Julie Su, the unconfirmed Acting Secretary of Labor, previously served in California government as appointees of Governor Gavin Newsom. Mr. Parker was chief of the Division of Occupational Safety and Health, known as Cal-OSHA, for the first two years of the COVID-19 shutdown. During that time, the actions of Cal-OSHA faced broad bipartisan criticism and sometimes bordered on the nonsensical.

For example, in June of 2021 Cal-OSHA proposed a rule that employees could go without masks in the workplace if, and only if, every worker present was vaccinated. So a single identified unvaccinated employee would cause all employees to have to wear masks; many described it as the worst possible policy. The rule was so widely criticized that Cal-OSHA reversed itself the following week, but still forced employers to collect vaccination information from employees. It was indicative of the

uncertainty and irrationality that marked the COVID experience for businesses and workers in our state.

Indeed, Cal-OSHA was widely criticized for its role in what, by any objective measure, was the nation's least successful handling of pandemic workplace policies. California had the most onerous business lockdowns and mandates through the COVID era, resulting in the highest unemployment of any state in the country. Still to this day, California ranks 49 out of 50 in employment. At the same time, the state had one of the worst public health records, with an age-adjusted excess mortality rate well above the national average. Beyond COVID, an NPR investigation found that Mr. Parker's agency also failed to protect workers from wildfire smoke, with required safeguards neglected.

This perverse formula – policies that undermine both economic vitality and public health – has unfortunately now become characteristic of OSHA at the federal level. Mr. Parker and Ms. Su have taken California's lose-lose approach national.

For example, shortly after Mr. Parker was sworn in as Assistant Secretary, OSHA published an emergency rule on workplace COVID-19 vaccination. The rule required employers with a total of 100 or more employees to develop, implement, and enforce a mandatory COVID-19 vaccination policy.

Within two months, the Supreme Court ruled that OSHA had exceeded its authority in an unprecedented way. The Court explained: "It is telling that OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind – addressing a threat that is untethered, in any causal sense, from the workplace." Policies like the one OSHA attempted to impose, the Court continued, are "the responsibility of those chosen by the people through democratic processes. Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly. Requiring the vaccination of 84 million Americans . . . certainly falls in the latter category."

Despite this rebuke from the high court on a matter of profound public interest – and despite the absence of a confirmed Secretary of Labor – OSHA has proceeded with an aggressive regulatory agenda. This includes 23 new regulations expected

within the next year, with an additional six under consideration for future action. Incredibly, OSHA continues to list a potential final rule on “Occupational Exposure to COVID-19 in Healthcare Settings,” even though President Biden has signed legislation declaring the national emergency to be over.

While many of the proposed regulations nominally concern important and appropriate topics – such as protecting workers from heat or updating injury reporting requirements – there are clear signs that the agency has other objectives in mind. For instance, serious worker privacy concerns have been expressed in relation to the electronic injury reporting regulation, and another rule blurs the line between health inspections and organizing campaigns. Nothing could be more antithetical to the mission of OSHA than using “health and safety” as a pretext for other political designs. This usurps the role of Congress and risks leaving workers without the protections they are entitled to by law.

Sadly, OSHA’s lack of focus on worker protections is showing up in nationwide data. In 2021, the total reported injuries increased by 6.3 percent to 2.2 million cases, up from 2.1 million cases in 2020. The fatal work injury rate was 3.6 fatalities per 100,000 full-time equivalent workers, the highest annual rate since 2016.

To carry out its aggressive, yet counterproductive, agenda, OSHA is seeking a 17 percent budget increase – that’s a \$106.4 million increase in funding, bringing its total budget request to \$738.7 million. Tellingly, this includes a 55 percent increase in funding for OSHA's office responsible for writing regulations.

Congress has a constitutional responsibility to use its oversight authority and appropriations power to rein in executive agencies, refocus their mission, and assure funds are spent efficiently and appropriately. That is the purpose of today’s hearing: to refocus OSHA on its core mission, so that a thriving workforce can coexist with robust workplace protections.